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## Articles:

### State Mergers and Acquisitions, Part 1: Successor Liability

In this installment of Inside Deloitte, Jacob Aguero, Tyler Greaves, and Grace Taylor of Deloitte Tax LLP, discuss successor liability for state income taxes in the context of mergers and acquisitions (M&A) and how some state tax statutes apply. This installment marks the inception of a comprehensive series that delves into the multifaceted world of state M&A, which will unravel complexities and shed light on the potential state tax implications.

**URL:** <https://www2.deloitte.com/content/dam/Deloitte/us/Documents/Tax/us-tax-april-2024-inside-deloitte-state-mergers-and-acquisitions.pdf>

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## Income/Franchise:

### Georgia: New Law Updates State Conformity to Internal Revenue Code

*H.B. 1162*, signed by gov. 4/22/24. Effective immediately, and applicable for taxable years beginning on or after January 1, 2023, new law generally updates Georgia’s corporate and individual income tax conformity to the Internal Revenue Code (IRC) of 1986 provided for in federal law enacted on or before January 1, 2024 (previously, January 1, 2023). Note that Georgia continues to decouple from other delineated provisions of the IRC. Please contact us with any questions.

**URL:** <https://www.legis.ga.gov/legislation/66745>

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## Income/Franchise:

### New York High Court Affirms Inclusion of Royalty Payments from Foreign Affiliates in Tax Base

2024 NY Slip Op 02127 (No. 34 and No. 35), N.Y. (4/23/24). The New York Court of Appeals (Court) affirmed [see *State Tax Matters*, Issue 2022-43 and *State Tax Matters*, Issue 2023-11, for details on the 2022 and 2023 respective rulings issued by the New York Supreme Court, Appellate Division, in these two cases] that while certain payments received by two separate taxpayers from their respective foreign affiliates (as “related members” under the statute) constituted royalties, such intercompany royalty payments could not, under the facts, be excluded under a former statutory royalty exclusion in effect for the prior tax years at issue in computing their respective Article 9-A corporation franchise tax combined return “entire net income.” In doing so, the Court agreed that based on the overall statutory scheme of Tax Law former § 208 (9)(o), the royalty income exclusion provision of one related member is conditioned on the application of the royalty add back by another related member, and any resulting burden on interstate or foreign commerce created by this tax scheme does not violate the Commerce Clause – and the taxpayers failed to show otherwise. Please contact us with any questions.

[URL: https://nycourts.gov/reporter/3dseries/2024/2024\\_02127.htm](https://nycourts.gov/reporter/3dseries/2024/2024_02127.htm)

[URL: https://dhub.deloitte.com/Newsletters/Tax/2022/STM/221028\\_3.html](https://dhub.deloitte.com/Newsletters/Tax/2022/STM/221028_3.html)

[URL: https://dhub.deloitte.com/Newsletters/Tax/2023/STM/230317\\_3.html](https://dhub.deloitte.com/Newsletters/Tax/2023/STM/230317_3.html)

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## Income/Franchise:

### New York: Enacted Budget Does Not Increase Corporate Income Tax Rate But Does Contain Various Tax Provisions

S.8309B/A.8809-B, signed by gov. 4/20/24. New York Governor Kathy Hochul signed legislation as part of New York's 2024-2025 Budget Act (Budget), which does *not* contain the corporate and personal income tax rate increases that had been proposed by the New York Legislature but does include some other tax-related provisions, such as:

**URL:** <https://www.nysenate.gov/legislation/bills/2023/S8309/amendment/original>

- Extending through 2029 the limit on the New York itemized deduction for charitable contributions related to individuals with income over \$10 million;
- Extending to 2029 provisions relating to the tax shelter reporting and penalty provisions;
- A technical correction to the Metropolitan Commuter Transportation Mobility Tax;
- Modifying the restriction on the issuance of notices for a tax year that is the subject of a pending petition filed with the New York Division of Tax Appeals;
- Adopting a refundable commercial security tax credit applicable to certain expenses of eligible businesses relating to qualified retail theft prevention measures;
- Extending through 2029 provisions relating to the current electronic filing and payment mandates;
- Clarifying the treatment of past-due tax liabilities and other matters related to the filing of amended sales tax returns;
- Extending provisions relating to the exemption from sales and use tax of certain tangible personal property and services sold to a related person required by the Dodd-Frank Wall Street Reform and Consumer Protection Act; and
- Creating a refundable tax credit generally available upon application to independently owned New York newspaper and broadcast media businesses based on new and existing employees (enacted as part of a separate budget bill, S8306C/A8806C).

See forthcoming Multistate Tax Alert for more details on these newly enacted provisions, and please contact us with any questions in the meantime.

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## Income/Franchise:

### Ohio Board of Tax Appeals Says Locality May Tax Pandemic-Based Telecommuting Under Valid Law

*Case No. 2021-2679*, Ohio Bd. of Tax App. (4/22/24). Citing a recent Ohio Supreme Court decision upholding the validity of state legislation enacted in 2020 that generally treats employees who report to a temporary worksite (including home) during the COVID-19 pandemic emergency period as working at their principal place of work for Ohio municipal income tax withholding purposes [see *State Tax Matters*, Issue 2024-7, for details on this 2024 Ohio Supreme Court ruling], the Ohio Board of Tax Appeals held that the City of Cincinnati, Ohio (City) may assess income tax liability to a nonresident employee for work performed outside of the City for those days he worked from home due to the COVID-19 declaration. Please contact us with any questions.

**URL:** <https://ohio-bta.modria.com/casedetails/523809>

**URL:** [https://dhub.deloitte.com/Newsletters/Tax/2024/STM/240216\\_3.html](https://dhub.deloitte.com/Newsletters/Tax/2024/STM/240216_3.html)

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## Sales/Use/Indirect:

### Colorado: New Law Seeks to Help Streamline State and Local Sales and Use Tax Compliance

*S.B. 23*, signed by gov. 4/19/24. With respect to Colorado's electronic sales and use tax simplification (SUTS) system administered by the Colorado Department of Revenue [see *H.B. 1017 (2023)*, and *State Tax Matters*, Issue 2023-24, for more details about the SUTS system] that incorporates a geographic information system (GIS) database, new law provides that any vendor relying upon information in the GIS database for determining which Colorado local tax jurisdictions are owed sales and use tax, and by what amount, generally

is held harmless in an audit by the state or local taxing jurisdiction for an underpayment of tax, charge, or fee liability that results solely from an error or omission in the GIS database data. However, the bill caveats that Colorado local tax jurisdictions are not required to hold vendors harmless in cases where the vendor used an incomplete or erroneous address when querying the GIS database. Please contact us with any questions.

[URL: https://leg.colorado.gov/bills/sb24-023](https://leg.colorado.gov/bills/sb24-023)

[URL: https://leg.colorado.gov/bills/hb23-1017](https://leg.colorado.gov/bills/hb23-1017)

[URL: https://dhub.deloitte.com/Newsletters/Tax/2023/STM/230616\\_7.html](https://dhub.deloitte.com/Newsletters/Tax/2023/STM/230616_7.html)

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## Sales/Use/Indirect:

### Louisiana Appellate Court Affirms OTCs are Not Subject to Tax as Hotels or Dealers

*Case No. 2023 CA 0069*, La. Ct. App. (4/17/24). In a case involving “merchant model transactions” where online travel companies (OTCs) act as the merchant of record and facilitate the booking of hotel rooms from various hotels/hotel chains, a Louisiana Court of Appeal (Court) affirmed that the OTCs are *not* “hotels” or “dealers” in these transactions and thus do *not* owe Louisiana sales and use taxes on the hotel stay amounts or service fees they collect from consumers for facilitating the hotel reservations. In doing so, the Court explained that the OTCs have no responsibility to directly remit the anticipated taxes they collect in the hotel room transactions to the appropriate taxing authorities, noting that such remittance responsibility falls on the underlying hotels/lodging places as “dealers” based on the wholesale rather than retail room rates. The Court also noted that, in this case, the OTCs did not retain any Louisiana sales or occupancy taxes due to the taxing authorities that were *not* ultimately remitted by the underlying hotels/lodging places. Please contact us with any questions.

[URL: https://www.la-fcca.org/opiniongrid/opinionpdf/2023%20CA%200069%20Decision%20Appeal.pdf](https://www.la-fcca.org/opiniongrid/opinionpdf/2023%20CA%200069%20Decision%20Appeal.pdf)

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## Sales/Use/Indirect:

### Maine: New Law Allows Businesses to Pay Tax on Certain Purchases Over the Use of Rental Rather than Upfront

LD 2214 / HP 1420, signed by gov. 4/22/24; Press Release: Governor Mills Signs Supplemental Budget, Maine Off. of the Governor (4/22/24). Recently enacted legislation attempts to “streamline, simplify, and modernize” certain Maine sales tax provisions and bring Maine into alignment with most other states by eliminating the requirement that Maine sales tax be paid upfront by a business when purchasing certain property (e.g., equipment) to rent out to consumers, instead allowing the tax to be paid over the use of a qualifying rental – “which eliminates the upfront financial burden on these business owners when acquiring rentable equipment.” Please contact us with any questions.

URL: <https://legislature.maine.gov/billtracker/#Paper/HP1420?legislature=131>

URL: <https://www.maine.gov/governor/mills/news/governor-mills-signs-supplemental-budget-2024-04-22>

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## Sales/Use/Indirect:

### Texas Comptroller of Public Accounts Re-Proposes Changes to Local Tax *Situsing* Rule

*Proposed Amended Title 34 Tex. Admin. Code section 3.334*, Tex. Comptroller of Public Accounts (4/19/24). For underlying procedural and some substantive tax-related reasons (including those involving certain small businesses), the Texas Comptroller of Public Accounts (Comptroller) is proposing to repeal its recently adopted local tax *situsing* rule regarding the location where an order is received [see *State Tax Matters*, Issue 2024-2, for details on this recent rule adoption], and simultaneously proposing to readopt the text of the rule with some amendments, so that such repeal would be effective the date the new version of the rule takes effect. The proposal revises Title 34 Tex. Admin. Code section 3.334, and continues to add “subsection (c)(7)” regarding the location where an order is received as follows:

URL: <https://www.sos.state.tx.us/texreg/pdf/backview/0419/0419is.pdf>

URL: [https://dhub.deloitte.com/Newsletters/Tax/2024/STM/240112\\_11.html](https://dhub.deloitte.com/Newsletters/Tax/2024/STM/240112_11.html)

“The location where the order is received by or on behalf of the seller means the physical location of a seller or third party such as an established outlet, office location, or automated order receipt system operated by or on behalf of the seller where an order is initially received by or on behalf of the seller and not where the order may be subsequently accepted, completed or fulfilled. An order is received when all of the information from the purchaser necessary to the determination whether the order can be accepted has been received by or on behalf of the seller. The location from which a product is shipped shall not be used in determining the location where the order is received by the seller.”

According to Comptroller, the repeal of the existing rule and adoption of the proposed new rule “will expand the local tax collection obligations of remote sellers” – essentially by requiring out-of-state sellers that collect state use tax to also collect applicable local sales tax. Litigation that may impact these changes remains pending. The Comptroller has scheduled a hearing for May 9, 2024 to take public comments on these proposed rule changes; any written comments are due 30 days from the April 19, 2024 publication date in the Texas Register. Please contact us with any questions.

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## Property:

### Texas: Deadline to Apply for New Medical or Biomedical Property Tax Exemption is April 30

*H.B. 2289*, signed by gov. 6/2/23. Pursuant to legislation enacted in 2023, an exemption from Texas property taxation on certain medical or biomedical property may be available to those persons owning or leasing such property within a medical or biomedical manufacturing facility beginning as of January 1, 2024. Examples of qualifying tangible personal property under this exemption potentially may include medical devices, instruments, tools, pharmaceuticals, therapeutics, personal protective equipment, and manufacturing inventories. Qualifying taxpayers have until April 30 to claim this exemption for the current tax year. Please contact us with any questions.

**URL:** <https://capitol.texas.gov/BillLookup/History.aspx?LegSess=88R&Bill=SB2289>

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## Property:

### Texas: Silo Systems Used in Fracking Qualify for Favorable Heaving Equipment Classification

*Case No. 11-22-00206-CV*, Tex. Ct. App. (4/18/24). In an ad valorem tax case involving “an issue of first impression,” the Texas Eleventh Court of Appeals (Court) reversed a lower court to hold that a fleet of mobile sand silo systems used to deliver sand at hydraulic fracturing (“fracking”) sites qualifies for favorable Texas “Dealer’s Heavy Equipment Inventory” (DHEI) appraisal for the tax years 2020 and 2021 at issue. In doing so, the Court explained that “there is no statutory impediment preventing the silo system from reasonably being classified based on its component parts for transportation functions and as an integrated system for operational functions,” and Texas’ taxation scheme “does not forbid the trailers that are used to haul and support the silo system equipment from being taxed as motor vehicles and the remaining silo system equipment from qualifying as heavy equipment.” Please contact us with any questions.

**URL:** <https://search.txcourts.gov/SearchMedia.aspx?MediaVersionID=b8d78e16-e5cc-4ca4-a3a2-e66a8793bd7a&coa=coa11&DT=Opinion&MediaID=775bd5da-1040-464c-af29-a0b826f2ac85>

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## Multistate Tax Alerts

Throughout the week, we highlight selected developments involving state tax legislative, judicial, and administrative matters. The alerts provide a brief summary of specific multistate developments relevant to taxpayers, tax professionals, and other interested persons. Read the recent alerts below or visit the archive.

**Archive:** <https://www2.deloitte.com/us/en/pages/tax/articles/multistate-tax-alert-archive.html?id=us:2em:3na:stm:awa:tax>

## **Louisiana modifies approval process for the Industrial Tax Exemption Program**

On February 21, 2024, the governor of Louisiana signed Executive Order Number JML 24-23 (“EO No. 24-23”), revising the Louisiana Industrial Tax Exemption Program (“ITEP”). The ITEP was established in 2016 to provide property tax abatements and exemptions to eligible manufacturers investing in the State. Among other revisions, EO No. 24-23 revises the standards and approval process for the ITEP. The most notable change is the removal of the previously required job creation condition for eligibility. The revisions set forth criteria that the governor and the Board of Commerce and Industry will consider for purposes of deciding what is in the best interests of the State and which ITEP projects will be approved.

**URL:** <https://gov.louisiana.gov/assets/ExecutiveOrders/2024/JML-Executive-Order-23.pdf>

This Multistate Tax Alert summarizes some of the key provisions of EO No. 24-23.

[Issued April 19, 2024]

**URL:** <https://www2.deloitte.com/content/dam/Deloitte/us/Documents/Tax/us-multistate-tax-alert-louisiana-april2024.pdf>

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